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LOGGED RECEIVED

MAR 23 2009 JS

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY



09-CV-00376-CMP

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SHONN D. COOK,

Plaintiff,

vs.

RSC EQUIPMENT RENTAL, INC., a  
Foreign For-Profit Corporation,

Defendant.

No. **C09 0376** JLR

NOTICE OF REMOVAL TO U.S.  
DISTRICT COURT UNDER  
28 U.S.C. § 1441(b) (DIVERSITY)

TO: Clerk of the Court

AND TO: Plaintiff, Shonn D. Cook, and his attorneys, Keith L. Kessler of Stritmatter,  
Kessler, Whelan, Coluccio and Arthur Dustin Miller

PLEASE TAKE NOTICE that defendant RSC Equipment Rental, Inc. hereby  
removes to this Court the state court action described below:

1. On March 5, 2009, an action was commenced in the Superior Court of the State of Washington in and for the County of Snohomish, entitled *Shonn D. Cook v. RSC Equipment Rental, Inc.*, Cause No. 09-2-03423-9.
2. The first date upon which defendant RSC Equipment Rental, Inc. received a copy of the complaint was March 9, 2009, when defendant RSC Equipment Rental, Inc. was served with the complaint and a summons from the Snohomish County Superior Court. Copies of the summons and complaint are attached hereto as Exhibit No. 1.

NOTICE OF REMOVAL TO U.S. DISTRICT COURT - 1

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
US Bank Centre  
1420 5th Ave., Suite 3010  
Seattle, WA 98101  
Telephone 206-622-1711

PDX/108765/157186/KXS/4471065.1

**ORIGINAL**

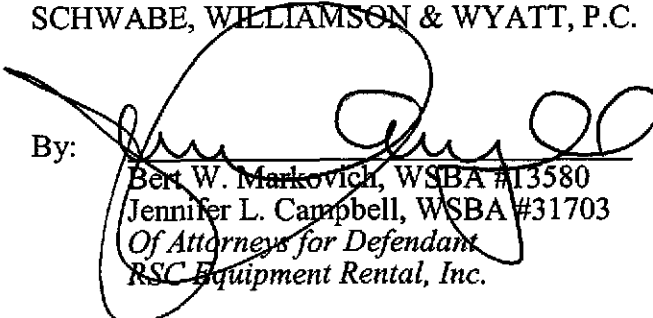
No Iss / Sea 24828

- 1 3. A copy of the service of process on RSC Equipment Rental, Inc. is attached hereto as  
2 Exhibit No. 2.
- 3 4. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332, which  
4 provides for original jurisdiction in cases in which there is diversity of citizenship  
5 between parties and the amount in controversy exceeds \$75,000.
- 6 5. Plaintiff has asserted a claim against RSC Equipment Rental, Inc., a foreign corporation,  
7 which is incorporated in the State of Arizona and has its principal place of business in  
8 Scottsdale, Arizona. Defendant is informed and believes that Plaintiff Shonn D. Cook is  
9 a resident of Clark County in the State of Washington.
- 10 6. Plaintiff alleges he fell from an aerial platform at an elevation of approximately 20-30  
11 feet. Plaintiff has not alleged a particular amount in his complaint, but is claiming  
12 compensation for damages, including past and future medical expenses, lost earnings,  
13 impaired earnings capacity, past and future physical pain, disability, past and future  
14 mental and emotional suffering; scarring and disfigurement and loss of enjoyment of life.
- 15 7. Defendant's counsel believes from information provided that plaintiff is seeking damages  
16 in excess of \$75,000.
- 17 8. A copy of this Notice of Removal will be filed with the Clerk of the Superior Court for  
18 Snohomish County, Washington, and a copy has been served on the attorney for Plaintiff,  
19 as indicated on the attached Certificate of Service.

20 Dated this 20 day of March, 2009.

21 SCHWABE, WILLIAMSON & WYATT, P.C.

22  
23 By:

  
24 Bert W. Markovich, WSBA #13580  
25 Jennifer L. Campbell, WSBA #31703  
26 *Of Attorneys for Defendant*  
*RSC Equipment Rental, Inc.*

NOTICE OF REMOVAL TO U.S. DISTRICT COURT - 2

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
US Bank Centre  
1420 5th Ave., Suite 3010  
Seattle, WA 98101  
Telephone 206-622-1711

# **EXHIBIT 1**

# **EXHIBIT 1**

**FILED**

MAR 05 2009

SONYA KRASKI  
SNOHOMISH COUNTY CLERK  
EX-OFFICIO CLERK OF COURT

County  
APC/Logan

MAR 05 2009

2 40  
P

29

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

SHONN D. COOK,

Plaintiffs,

v.

RSC EQUIPMENT RENTAL, INC., a foreign  
corporation,

Defendant.

NO. **09 2 03423 9**

SUMMONS

THE STATE OF WASHINGTON, TO RSC EQUIPMENT RENTAL, INC.:

TO THE DEFENDANT:

A lawsuit has been started against you in the above-entitled court by Plaintiff, SHONN D. COOK. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorneys for the Plaintiff within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what is asked for in the Complaint because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that the Plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the Plaintiff. Within 14 days after you serve the demand, the Plaintiff must file this lawsuit with the court, or the service on you of this Summons and Complaint will be void.

SUMMONS - 1

1  
2 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
3 that your written response, if any, may be served on time.

4 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
5 of Washington.

6 DATED: February 27, 2009.

7 Keith L. Kessler #26171 for  
8 Keith L. Kessler, WSBA # 4370  
9 Stritmatter Kessler Whelan Coluccio  
10 Co-counsel for Plaintiff

11 Arthur D. Miller by Rwk  
12 Arthur Dustin Miller, WSBA #9166  
13 Law Office of Arthur Dustin Miller  
14 Co-counsel for Plaintiff

**FILED**

MAR 05 2009

SONYA KRASKI  
SNOHOMISH COUNTY CLERK  
EX-OFFICIO CLERK OF COURT

**SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY**

**SHONN D. COOK,**

**Plaintiff,**

**v.**

**RSC EQUIPMENT RENTAL, INC., a Foreign  
For-Profit Corporation,**

**Defendant.**

**NO. 09 2 03423 9**

**COMPLAINT FOR PERSONAL  
INJURIES AND LOSSES**

**PLAINTIFF SHONN D. COOK ALLEGES AS FOLLOWS:**

**I. PARTIES**

**1.1 Plaintiff Shonn D. Cook is a resident of Vancouver, Washington.**

**1.2 Defendant RSC Equipment Rental, Inc. (a/k/a Rental Service Corporation,  
hereinafter "RSC"), is a for-profit corporation doing business in Snohomish County,  
Washington.**

**II. JURISDICTION/VENUE**

**2.1 The Superior Courts of the State of Washington have jurisdiction over the parties  
to and the subject matter of this action.**

**2.2 Snohomish County is a proper venue for the resolution of this matter.**

**COMPLAINT FOR PERSONAL INJURIES AND LOSSES - 1**

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**III. FACTS**

3.1 Defendant RSC is in the business of renting equipment, including aerial platforms (scissor lifts), to contractors and subcontractors for use on-site at construction and repair projects.

3.2 Defendant RSC operates an equipment rental facility in Everett, Washington.

3.3 On or about October 8, 2007, Defendant RSC rented a Genie aerial platform (Model No. GS2646, hereinafter "subject aerial platform") to D.M. Hoggatt for use in painting the interior of a new Lowe's Home Improvement facility in Monroe, Washington.

3.4 Plaintiff Shonn Cook was employed by D.M. Hoggatt to paint the ceiling of the Lowe's Facility. He performed his work daily using an aerial platform.

3.5 As was the case with all aerial platforms in use on this job site, the hinges of the entry gate at the rear of the aerial platforms were spring-operated, automatically closing and locking the gate by means of a spring latch.

3.6 On October 8, 2007, Plaintiff Cook was assigned the subject Genie aerial platform that had just been delivered to the job-site.

3.7 After painting the ceiling for three hours on that date, at approximately 11:30 a.m. Plaintiff Cook stepped back on the platform to examine his work.

3.8 Unknown to Plaintiff Cook, the hinge springs for the gate at the rear of the subject aerial lift had not been maintained, and were in fact broken, resulting in the gate failing to close.

3.9 Plaintiff Cook was working at an elevation of between 20 and 30 feet above the cement floor.

3.10 With the gate having failed to close, as Plaintiff Cook stepped backward on the aerial lift, he fell out the back and onto the cement floor, sustaining multiple severe injuries.

1  
2 **IV. NEGLIGENCE/PROXIMATE CAUSE**

3 4.1 Defendant RSC had a duty to exercise ordinary care to maintain its rental  
4 equipment in a proper operating condition.

5 4.2 Defendant RSC had a further duty to inspect the equipment that it rented to others  
6 to make sure that the equipment was in a safe condition, and not defective, and further that  
7 legible warnings were in place on the machinery.

8 4.3 Defendant RSC breached these duties in providing Plaintiff's employer with a  
9 defective and dangerous aerial lift that also lacked proper warnings.

10 4.4 As a direct and proximate result of Defendant RSC's negligent conduct, the  
11 subject aerial lift gate malfunctioned, and Plaintiff was severely injured.

12 **V. DAMAGES**

13 5.1 Plaintiff Cook sustained multiple severe injuries in the subject fall from the aerial  
14 platform, including, but not limited to, a brain concussion, wrist fractures (distal radius), upper  
15 arm contusion, rotator cuff tear, edema (right arm, right hip and buttocks), spinal subluxations,  
16 myospasms, ankle sprain/strain, shoulder sprain/strain, headaches, ringing in his right ear,  
17 damage to olfactory senses, and injury to the right side of his face.

18 5.2 As a result of these injuries, Plaintiff has been unable to return to work, and is  
19 sustaining significant and continuing economic losses.

20 5.3 Plaintiff's damages and losses arising out of this incident include, without  
21 limitation:

22 5.3.1 Past and future medical expenses;

23 5.3.2 Lost earnings;



- 5.3.3 Impaired earning capacity;
- 5.3.4 Past and future physical pain;
- 5.3.5 Disability;
- 5.3.6 Past and future mental and emotional suffering;
- 5.3.7 Scarring and disfigurement; and
- 5.3.8 Loss of enjoyment of life,

all in amounts to be proved at the time of trial.

#### VI. PRAYER FOR RELIEF

6.1 Based on the foregoing, Plaintiff asks for the following relief:

6.1.1 Judgment against Defendant RSC and any other at-fault entity for the damages and losses set forth in Paragraph 5.3;

6.1.2 Prejudgment interest on the above damages to the extent allowed by law;

6.1.3 Reasonable and statutory attorneys fees and costs; and

6.1.4 Such further relief as justice and equity warrant.

DATED: February 27, 2009.

*Rgw Kessler #26171 for*  
Keith L. Kessler, WSBA # 4370  
Stritmatter Kessler Whelan Coluccio  
Co-counsel for Plaintiff

*Arthur D. Miller by PWK*  
Arthur Dustin Miller, WSBA #9166  
Law Office of Arthur Dustin Miller  
Co-counsel for Plaintiff

## **EXHIBIT 2**

## **EXHIBIT 2**



**Service of Process  
Transmittal**

03/09/2009

CT Log Number 514548458



**TO:** Frank Soricelli  
RSC Equipment Rental, Inc.  
6929 East Greenway Parkway, Suite 200  
Scottsdale, AZ 85254

**RE:** Process Served in Washington

**FOR:** RSC Equipment Rental, Inc. (Domestic State: AZ)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Shonn D. Cook, Pltff. vs. RSC Equipment Rental, Inc., etc., Dft.

**DOCUMENT(S) SERVED:** Summons, Complaint

**COURT/AGENCY:** Snohomish County, Superior Court, WA  
Case # 09 2 03423 9

**NATURE OF ACTION:** Personal Injury - Failure to maintain rental equipment in a proper operating condition - On October 8, 2007

**ON WHOM PROCESS WAS SERVED:** CT Corporation System, Olympia, WA

**DATE AND HOUR OF SERVICE:** By Process Server on 03/09/2009 at 14:40

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, excluding the day of service

**ATTORNEY(S) / SENDER(S):** Keith L. Kessler  
Stritmatter Kessler Whelan Coluccio  
413 Eight Street  
Hoquiam, WA 98550

**ACTION ITEMS:** CT has retained the current log, Retain Date: 03/09/2009, Expected Purge Date: 03/14/2009  
Image SOP  
Email Notification, Dale Aurigemma dale.aurigemma@rscrental.com  
Email Notification, Jill Thomas jill.thomas@rscrental.com  
Email Notification, Frank Soricelli frank.soricelli@rscrental.com  
Email Notification, Kevin Groman kevin.groman@rscrental.com  
Email Notification, Brenda Baca Brenda.Baca@rscrental.com  
Email Notification, Joseph Webb joe.webb@rscrental.com

**SIGNED:** CT Corporation System

**PER:** Michele Rowe

**ADDRESS:** 1801 West Bay Drive NW  
Suite 206  
Olympia, WA 98502

**TELEPHONE:** 360-357-6794

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23 day of March, 2009, I caused to be served the foregoing Notice of Removal to U.S. District Court (Seattle) on the following party at the following address:

Keith Kessler  
Stritmatter Kessler Whelen Couccio  
413 Eighth Street  
Hoquiam, WA 98550

Arthur D. Miller  
Attorney at Law  
500 W 8<sup>th</sup> Street, Ste 250  
Vancouver, WA 98660

By:

<input checked="" type="checkbox"/>	U.S. Postal Service, ordinary first class mail
<input type="checkbox"/>	U.S. Postal Service, certified or registered mail,
<input type="checkbox"/>	return receipt requested
<input type="checkbox"/>	hand delivery
<input checked="" type="checkbox"/>	facsimile
<input type="checkbox"/>	electronic service
<input type="checkbox"/>	other (specify) _____

  
Rayanne Sherwood

CERTIFICATE OF SERVICE - 1

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
US Bank Centre  
1420 5th Ave., Suite 3010  
Seattle, WA 98101  
206-622-1711